IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ PetitionNo. 7706 of 2006
Date of decision : 14-11-2006

M/s Vikas Metal, Jalandhar, through its
Partner Sham Lal. … Petitioner

Versus

The Presiding Officer, Labour Court,
Jalandhar, and others. … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. R.S.Sharma, Advocate,
for the petitioner

Mr. Suresh Pal, Adocate,
for respondent No.2

…

ARVIND KUMAR,J:

Petitioner-management,on 1.6.1997, inducted respondent No.2-workman on the post of Burn Operator and he worked as such till 25.8.2000 when his services were terminated. Feeling aggrieved with his termination, the workman served a demand notice upon the management seeking reinstatement with continuity of service and full back-wages. On failure of the reconciliation proceedings, the matter was referred to the Labour Court for adjudication. The workman filed claim statement before the Labour Court, taking the plea that his services were terminated illegally without any notice, charge-sheet or enquiry. Later, on account of non-appearance, vide order dated 19.2.2003 the management was proceeded against ex-parte. On production of ex-parte evidence by the workman, the Labour Court vide ex-parte award dated 7.5.2004 (Annexure P-2) held termination of his services as illegal and unjustified and consequently, ordered his reinstatement with continuity of service and full back-wages.

Hence, the present writ petition by the petitioner-management under Articles 226/227 of the Constitution of India, seeking quashing of ex-parte award dated 7.5.2004, Annexure P/2.

As per averments made in the present writ petition, the petitioner-management being aggrieved of the afore-stated ex-parte award, on 4.10.2004, filed an application for setting aside of the same but however during the pendency of said application the Presiding Officer of the Labour Court was withdrawn and that the said application has not been decided so far due to non-functioning of the Labour Court.

On behalf of respondent No.2- workman, no written statement has been filed.

We have heard the learned counsel for the parties.

The learned Labour Court proceeded ex-parte against the petitioner-management, holding as follows:-

> " Form "F" for workman filed. The management was summoned through regd. Cover which was sent on 5.12.2002. Today period of more than 30 days have elapsed but neither said letter nor A.D. received back hence, it is presumed to have reached its destination. Service on management is declared to be effected. Since nobody has appeared for the management, it is proceeded against ex-parte.
>
> Exparte evidence be produced on affidavit on 30.5.2003.
>
> P.O.
> 19.2.2003. "

A bare perusal of the award demonstrates that presumption in law was raised that notice must have been received as the same had not been received back undelivered. No such presumption could possibly be raised in view of rule 18 of the Industrial Disputs(Punjab) Rules,1958. It reads as under:-

> " 18. Service of Summons or Notice, - Subject to the provisions contained in Rule 20, any notice, summons, process or order issued by a Board, Court, Labour Court, Tribunal, or an Arbitrator, empowered to issue such

> notice, summons, process or order may be served either personally or by registered post and where it is not practicable to effect service in any of the manners aforesaid, the notice, summons, process or order, as the case may be, shall be served by affixing a copy thereof on the outer door or some other conspicuous part of the house or the place where the party upon whom service is to be effected, ordinarily resides or caries on business or personally works for gain. "

The afore-stated rule prescribes that service must be effected personally or by registered post. Where it is not possible to effect the service through any of the said modes, in that event the Labour Court can direct affixation of a copy of the notice on the outer door or some conspicuous part of the house or place of business. The learned Labour Court while not adopting the said mode, has fallen into error in drawing presumption as contained in Order XV rule 5-A of the Code of Civil Procedure. In State Transport Commissioner, Punjab v. Bhajan Singh and another, 1992(5) Services Law Reporter 763, the Labour Court had drawn presumption that service had been effected and it was held that this presumption is since rebuttable. It cannot be termed that there was good service and the award passed ex-parte could not be sustained.

For the aforegoing reasons, the present writ petition is allowed and award dated 7.5.2004 (Annexure P-4) set aside. The matter stands remitted back to the Labour Court with a direction to proceed from the stage of appearance of the petitioner-management.

Parties through their counsel are directed to appear before the Labour Court, Jalandhar (defunct Court) on 11.12.2006.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 14, 2006
JS